Calendar No. 914

101ST CONGRESS
2d Session

SENATE

REPORT
101-491

SUDBURY, ASSABET, AND CONCORD WILD AND SCENIC RIVER STUDY ACT OF 1990

OCTOBER 3 (legislative day, OCTOBER 2), 1990.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 2262]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2262) to designate segments of the Sudbury, Assabet, and Concord Rivers as a study area for inclusion in the National Wild and Scenic Rivers System, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill as amended do pass.

The amendments are as follows:

1. Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Sudbury, Assabet, and Concord Wild and Scenic River Study Act of 1990".

SEC. 2. FINDINGS.

The Congress finds that—

(1) the Sudbury, Assabet, and Concord Rivers in the Commonwealth of Massachusetts possess resource values of national significance, including outstanding wildlife and ecological values, historic sites, and a cultural past importance to the Nation's literary heritage;

(2) portions of the river segments to be studied pursuant to this Act are listed on the Nationwide Rivers Inventory;

(3) there is strong support among State and local officials, area residents, and river users for a wild and scenic river study of the area; and

(4) in view of the longstanding Federal practice of assisting States and local governments in protecting, conserving, and enhancing rivers of national significance, the United States has an interest in assisting the Commonwealth of Massachusetts and appropriate local governments in studying and developing a resource conservation and management plan for the river, consistent with the Wild and Scenic Rivers Act.

S313-52

SEC. 3. WILD AND SCENIC RIVER STUDY.

Section 5(a) of the Wild and Scenic Rivers Act, as amended (16 U.S.C. 1276(a)), is further amended by adding the following new paragraph at the end thereof:

"(109) SUDBURY, ASSABET, AND CONCORD, MASSACHUSETTS.—

"(A) SUDBURY.—The segment from the Danforth Street Bridge in the town of Framingham to its confluence with the Assabet River.

"(B) ASSABET.—The segment beginning at a point 1,000 feet downstream of the Damon Mill Dam in the town of Concord to its confluence with the Sudbury River.

"(C) CONCORD.—The segment beginning at its confluence with the Sudbury and Assabet Rivers downstream to the Route 3 bridge in the town of Billerica.".

SEC. 4. CONTENTS OF STUDY.

Section 5(b) of the Wild and Scenic Rivers Act, as amended (16 U.S.C. 1276(b)), is further amended by adding the following new paragraph at the end thereof:

"(9)(A) The study of the Sudbury, Assabet, and Concord Rivers named in paragraph (109) of subsection (a), shall be completed and the report filed thereon not later than at the end of the third fiscal year beginning after the date of enactment of this paragraph.

"(B) The study shall recognize the importance of such rivers as a source for drinking water and municipal waste water treatment purposes for the towns along the river. The study shall not recommend restricting the use of the rivers for water supply or municipal waste water treatment purposes, provided such uses are consistent with sound water supply and waste water treatment practices and other applicable law, including section 7 of this Act.".

SEC. 5. SUDBURY, ASSABET, AND CONCORD RIVER STUDY ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—At the earliest practicable date following the enactment of this Act, the Secretary of the Interior (hereinafter in this section referred to as the "Secretary") shall establish the Sudbury, Assabet, and Concord River Study Advisory Committee (hereinafter in this section referred to as the "Advisory Committee").

(b) PURPOSE.—The purpose of the Advisory Committee is to advise the Secretary during the preparation of the study of the river segments identified in section 3 of this Act.

(c) MEMBERSHIP.—The Advisory Committee shall consist of 13 members appointed by the Secretary as follows:

(1) One member appointed from the United States Fish and Wildlife Service;

(2) Two members appointed from among recommendations submitted by the Governor of the Commonwealth of Massachusetts, one from the Massachusetts Department of Fisheries, Wildlife, and Law Enforcement, and one from the Massachusetts Water Resources Authority;

(3) One member from among recommendations submitted by the Sudbury Valley Trustees;

(4) One member from among recommendations submitted by the Organization for the Assabet River; and

(5) Eight members from among recommendations submitted by the appropriate local governing body of each of the eight towns located within the area covered by the study.

(d) VACANCIES.—A vacancy in the Advisory Committee shall be filled in the same manner in which the original appointment was made. Vacancies in the membership of the Advisory Committee shall not affect its power to function so long as there are sufficient members to constitute a quorum as provided in subsection (f).

(e) CHAIRPERSON.—The Advisory Committee shall elect a Chairperson from among its members.

(f) QUORUM.—Seven members of the Advisory Committee shall constitute a quorum.

(g) COMPENSATION.—Members of the Advisory Committee shall serve without compensation.

(h) SERVICES.—The Advisory Committee is authorized to accept services and other assistance from State and local governments.

(i) CHARTER RENEWAL.—The provisions of section 14(b) of the Federal Advisory Committee Act (86 Stat. 776) are hereby waived with respect to the Advisory Commission.

(j) TECHNICAL ASSISTANCE.—The Secretary is authorized to provide such technical and other assistance as the Secretary deems necessary for the Commission to fulfill its purpose as provided in this section.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

2. Amend the title so as to read:

A bill to amend the Wild and Scenic Rivers Act to designate segments of the Sudbury, Assabet, and Concord Rivers for study for potential addition to the National Wild and Scenic Rivers System, and for other purposes.

Purpose of the Measure

The purpose of S. 2262, as ordered reported, is to designate segments of the Sudbury, Assabet and Concord Rivers in Massachusetts for study for potential inclusion in the National Wild and Scenic Rivers System.

Background and Need

Located in eastern Massachusetts, just northwest of the metropolitan Boston area, the Sudbury, Assabet and Concord Rivers flow through some of the most historically significant areas of the United States.

Portions of the River segments proposed to be studied were listed by the National Park Service in its 1982 Nationwide Rivers Inventory as possessing qualities suitable for possible inclusion in the Wild and Scenic Rivers System. All three rivers provide important fish and wildlife habitat and the Concord River flows through the Great Meadows National Wildlife Refuge.

The Concord River is formed by the confluence of the Sudbury and Assabet Rivers in the town of Concord, the setting of some of the Nation's most historic events. In 1775, the "shot heard 'round the world" was fired over the Assabet River to launch the American Revolution and the battle at North Bridge marked the first successful armed resistance by the American Colonists against the British in the American Revolution.

Legislative History

S. 2262 was introduced by Senators Kerry and Kennedy on March 8, 1990. The Subcommittee on Public Lands, National Parks and Forests held a hearing on this measure on May 17, 1990.

At the business meeting on September 19, 1990, the Senate Committee on Energy and Natural Resources ordered S. 2262, as amended, favorably reported.

Committee Recommendations and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on September 19, 1990, by a unanimous vote of a quorum present, recommends that the Senate pass S. 2262, if amended as described herein.

The roll call vote on reporting the measure was 18 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. Johnston [1]	
Mr. Bumpers	

Mr. Ford
Mr. Bradley
Mr. Bingaman
Mr. Wirth
Mr. Conrad
Mr. Heflin [1]
Mr. Akaka [1]
Mr. McClure
Mr. Hatfield [1]
Mr. Domenici [1]
Mr. Wallop
Mr. Murkowski
Mr. Nickles [1]
Mr. Burns
Mr. Garn [1]
Mr. McConnell

[1] Indicates voted by proxy.

Committee Amendment

During the consideration of S. 2262, the Committee adopted an amendment in the nature of a substitute. In addition to making several technical, clarifying and conforming changes, the amendment deletes a provision in S. 2262 as introduced which would have provided that the study not recommend Federal condemnation of private lands as an alternative.

While the Committeee amendment deletes that provisons, it is the Committee's view that the study should carefully consider alternatives to Federal condemnation. Given the land ownership patterns and the needs of the local communities, it is the Committee's expectation that Federal land acquisition will not be necessary to protect these rivers, should they be designated as components of the Wild and Scenic Rivers System. It is the Committee's view that a strategy which emphasizes a Federal, State and local government and private landowner partnershp would enjoy the greatest likelihood of success in protecting these rivers, and the Natonal Park Service is strongly encouraged to devleop a strategy in close consultation with the State of Massachusetts as well as local governments emphasizing this approach.

The Committee amendment also deletes a provision which would have allowed towns located along the river segments to veto a recommendation by the Secretary of the Interior in the study proposing inclusion of a particular segment within the Wild and Scenic Rivers System.

Section-by-Section Analysis

Section 1 entitles the Act the "Sudbury, Assabet, and Concord Wild and Scenic River Study Act of 1990."

Section 2 contains the Congressional findings.

Section 3 amends section 5(a) of the Wild and Scenic Rivers Act to designate segments of the Subdury, Assabet and Concord Rivers in Massachusetts for study for potential inclusion in the National Wild and Scenic Rivers System. The combined length of the three segments to be studied is approximatley 29 miles.

Section 4 amends section 5(b) of the Wild and Scenic Rivers Act to provide that the study shall be completed and the report filed not later than at the end of the third fiscal year beginning after the date of enactment of this Act. The paragraph also provides that the study is to recognize the importance of the three rivers as a source for drinking water and municipal waste water treatment purposes for towns along the rivers. The study is not to recommend restricting the use of the rivers for such purposes provided such uses are consistent with sound water supply and waste water treatment practices, and other applicable laws, including section 7 of the Wild and Scenic Rivers Act.

Section 5 establishes the 13 member Sudbury, Assabet, and Concord River Study Advisory Committee to advise the Secretary of the Interior during the preparation of the river study.

Section 6 authorizes the appropriation of such sums as may be necessary to carry out the purposes of the Act.

Cost and Budgetary Consideration

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 25, 1990.

Hon. J. Bennett Johnston, Jr.,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 2262, the Sudbury, Assabet, and Concord Wild and Scenic River Study Act of 1990, as ordered reported by the Senate Committee on Energy and Natural Resources, September 19, 1990. CBO estimates that enactment of this bill would result in costs to the federal government of $250,000 over the 1991–1993 period, and in no costs to state and local governments.

S. 2262 would add segments of the Sudbury, Assabet, and Concord rivers in Massachusetts to the list of rivers to be studied for inclusion in the Wild and Scenic River System. The study would be completed within three years of enactment. The bill would establish a 13-member advisory committee to be regularly consulted as the report is prepared. Based on information from the Department of the Interior, CBO estimates that preparation of the study would cost $250,000 over the three-year period, assuming appropriation of the necessary sums.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Marta Morgan, who can be reached at 226–2860.

Sincerely,

Robert F. Hale
(For Robert D. Reischauer, Director).

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following eval-

uation of the regulatory impact which would be incurred in carrying out S. 2262. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 2262, as reported.

Executive Communications

On April 30, 1990, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget and on May 22, 1990 requested legislative reports from the Federal Energy Regulatory Commission setting forth executive views on S. 2262. These reports had not been received at the time the report on S. 2262 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the National Park Service at the Subcommittee hearing follows:

Statement of James W. Stewart, Assistant Director, National Park Service, Department of the Interior

Mr. Chairman, while we support the concept of a Wild and Scenic River study for the Sudbury, Assabet, and Concord Rivers, we do not support S. 2262 in its present form.

S. 2262 would amend the Wild and Scenic Rivers Act to designate segments totalling 29 miles of the Sudbury, Assabet, and Concord Rivers in Massachusetts for study as potential components of the National Wild and Scenic Rivers System. The study report would be due in 3 fiscal years.

Section 4 of the bill would direct the Secretary of the Interior to establish a special 13-member study committee. The Secretary must cooperate with the study committee in the conduct of the study and in the development of information needed to determine eligibility of the river segments for inclusion in the National System. Unlike the usual advisory committees, members of this study committee would be appointed directly by State and local officials.

Subsections (e) through (g) of section 4 set forth requirements of the study. Subsection (h) gives each of the 8 towns located along the study segments a veto over the Secretary's recommendation that the segment be designated as a component of the National System.

The Nationwide Rivers Inventory published in 1982 included 8 miles of the Sudbury, indicating that it is an historic Atlantic Salmon fishery, and 6 miles of the Concord, indicating its recreational value due to its proximity to the Boston area. The Assabet River was not identified on the Inventory.

We believe, therefore, that the 6 miles of the Concord and the 8 miles of the Sudbury identified earlier merit a

formal study under the Wild and Scenic Rivers Act. We have no objection to the longer segments of the Concord and Sudbury Rivers being added to the Study, or the Assabet, since it joins directly with the other river segments.

Mr. Chairman, if a river segment is designated for study under the Wild and Scenic Rivers Act, section 4(A) of the Act requires that the study shall indicate the reasonably foreseeable potential uses of the land and water which would be enhanced, foreclosed, or curtailed if the segment is included in the National System. Section 4(b) of the Act requires the Secretary to submit the Study report to the Governor or his designee, and to include the Governor's comments in any report to the Congress. Section 5(c) of the Act requires that studies be pursued in close cooperation with agencies of the State and its political subdivisions, and that studies shall be carried on jointly with such agencies if a request is made by the State. As a matter of course, the National Park Service also includes the views of all affected jursidictions in our study reports.

Since the Wild and Scenic Rivers Act itself provides for analysis of alternative land uses and for input from the State concerned, we believe section 4 of S. 2262 is not needed. Further, the provisions in that section giving State and local officials the power to appoint members to a study commission and veto authority over Secretarial recommendations are not acceptable. Unless section 4 of the Bill is deleted, we would oppose it.

If the bill is intended as a vehicle for planning assistance to local governments, a Wild and Scenic study bill is not necessary.

Planning assistance is available under the National Park Service Rivers and Trails Technical Assistance Program. If S. 2262 reflects local desires and concerns, it would seem that the local people want technical and financial assistance in developing a conservation plan which will be based on local management. This is exactly what our technical assistance program is designed to offer. A formal Wild and Scenic River study to determine the suitability or nonsuitability of a river segment for addition to the National System, as provided in S. 2262, is not necessary if local planning and management assistance is the goal of the bill. We would be pleased to work with the sponsors of S. 2262, local town representatives, landowners, and conservation organizations to develop a technical assistance program for these river segments.

This concudes my prepared remarks, Mr. Chairman.

Changes in Existing Law

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 2262, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is

printed in italic, existing law in which no change is proposed is shown in roman):

WILD AND SCENIC RIVERS ACT

AN ACT To provide a National Wild and Scenic Rivers System, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Wild and Scenic Rivers Act".

* * * * * * *

SEC. 5. (a) The following rivers are hereby designated for potential addition to the national wild and scenic rivers system:

* * * * * * *

(109) SUDBURY, ASSABET, AND CONCORD, MASSACHUSETTS.—

(A) SUDBURY.—The segment from the Danforth Street Bridge in the town of Framingham to its confluence with the Assabet River.

(B) ASSABET.—The segment beginning at a point 1,000 feet downstream of the Damon Mill Dam in the town of Concord to its confluence with the Sudbury River.

(C) CONCORD.—The segment beginning at its confluence with the Sudbury and Assabet Rivers downstream to the Route 3 bridge in the town of Billerica.

(b)(1) The studies of rivers named in subparagraphs (28) through (55) of subsection (a) of this section shall be completed and reports thereon submitted by not later than October 2, 1979: *Provided,* That with respect to the rivers named in subparagraphs (33), (50), and (51), the Secretaries shall not commence any studies until (i) the State legislature has acted with respect to such rivers or (ii) one year from the date of enactment of this Act, whichever is earlier.

* * * * * * *

(9)(A) The study of the Sudbury, Assabet, and Concord Rivers named in paragraph (109) of subsection (a), shall be completed and the report filed thereon not later than at the end of the third fiscal year beginning after the date of enactment of this paragraph.

(B) The study shall recognize the importance of such rivers as a source for drinking water and municipal waste water treatment purposes for the towns along the river. The study shall not recommend restricting the use of the rivers for water supply or municipal waste water treatment purposes, provided such uses are consistent with sound water supply and waste water treatment practices and other applicable law, including section 7 of this Act.

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